



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 46 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The landlord's agent SA appeared for the landlord ("the landlord"). The landlord provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the tenant was served with the Application for Dispute Resolution and supporting documents pursuant to Section 89 of the *Act* by registered mail on August 27, 2018. The landlord provided the Canada Post tracking number for the registered mail. Pursuant to Section 89 and 90, I find the tenant was served on September 1, 2018, the 5<sup>th</sup> day after mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential month-to-month tenancy agreement commencing November 16, 2016 for rent of \$1,150.00 a month payable on the first of the month.

The landlord testified the tenant paid a security deposit at the start of the tenancy, of \$575.00 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") which the landlord testified was served by registered mail on August 2, 2018, thereby affecting service under section 90 on August 7, 2018, claiming unpaid rent of \$2,300.00. The landlord filed a witnessed Proof of Service Notice to End Tenancy form.

A copy of the Ten-Day Notice with an effective vacancy date of August 12, 2018 (corrected to August 17, 2018) was submitted as evidence. The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days (by August 12, 2018).

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days.

The landlord testified the tenant paid the following amounts with corresponding dates on the outstanding rent:

- \$2,300.00 on August 13, 2018
- \$600.00 on September 7, 2018

- \$550.00 on September 10, 2018

The tenant has made no subsequent payments and continues to reside in the rental unit.

The landlord provided uncontradicted testimony that rent is owing in the amount of \$1,150.00. The landlord requests a monetary order in this amount.

### Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on August 7, 2018 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of August 17, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a Monetary Order pursuant to section 67 in the amount of \$1,150.00 for unpaid rent. I award the landlord reimbursement of the \$100.00 filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$575.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$1,150.00
Reimbursement of filing fee	\$100.00

(Less security deposit)	(\$575.00)
<b>Monetary Order</b>	<b>\$675.00</b>

Conclusion

I grant a monetary order to the landlord in the amount of **\$675.00**.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 12, 2018

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Residential Tenancy Branch